IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

MFA.No. 631 of 1999()

AGAINST THE AWARD DT. 30.1.99 IN OPMV.371/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA.

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APPELLANT: PETITIONER

*** T.A.AMBILI, S/O. LATE ABRAHAM,**
THONDUNGAL HOUSE,
VADAVUCODE KARA
PUTHENCRUZ VILLAGE

ADDL.R2 & R3 ARE IMPLEADED

2. JESSY M.VARGHESE, AGED 45 YEARS
W/O. LATE AMBILI T.A., THONDUNGAL HOUSE,
VADUVAKODE, PUTHENCRUZ (VIA),
ERNAKULAM DIST.

3. EMIL AMBILI, AGED 18 YEARS,
S/O.LATE AMBILI T.A.,
THONDUNGAL HOUSE, VADAVUKODE,
PUTHENCRUZ , ERNAKULAM DIST.

ADDL.R2 & R3 ARE IMPLEADED AS LR'S OF THE DECEASED APPELLANT VIDE ORDER DT. 23.2.07 IN IA.806/2006.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENTS: RESPONDENTS
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1. C.K.SUKUMARAN, S/O.KUNJAPPAN,
PERUMATTATHIL HOUSE,
PERINGALA, KUNNATHUNADU.

2. PAULOSE, S/O.CHACKO,
THECKEDATHU HOUSE, MORACKALA,
PALLICHARA KARA,
KINNATHUNADU VILLAGE,.
KUNNATHUNADU TALUK.

3. NATIONAL INSURANCE COMPANY LTD.,
PERUMBAVOOR BRANCH.

4. THOMAS PAUL, PUTHENPLACKAL HOUSE,
KUMARAPURAM

BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.631 OF 1999

Dated 1st June, 2007

JUDGMENT

Koshy,J.

Appellant while riding a scooter was hit by a lorry driven by the second respondent. The lorry was insured by the third respondent insurance company. As a result of the accident, he sustained serious injuries. He claimed a compensation of Rs.6,00,000/=. The Tribunal awarded a total compensation of Rs.1,47,140/= out of which Rs.65,000/= was awarded for reimbursement of actual medical bills. Only quantum of compensation is disputed in this appeal.

2. Appellant was aged 37 at the time of the accident. The Tribunal has taken 17 as the multiplier. If second schedule is taken as guidance, 16 is the correct multiplier. Even though insurance company did not challenge the award, we are of the view that no exceptional circumstances are made out to grant a higher multiplier. Contention of the appellant that he could have been able to work for another 27 years and a higher multiplier ought to have been taken cannot be accepted. With regard to the income, he has produced Ext.A13 salary certificate to show that he was getting Rs.5,000/= per month working as a Site

Manager of a PWD Contractor apart from free food, T.A. and accommodation. Merely because the employer was not examined, Tribunal did not accept the above even though the certificate was not challenged. Ext.A16 certificate issued by university shows that the appellant was a B.Com. Degree holder. He was maintaining a family. The Tribunal accepted only Rs.2,000/= as monthly income. Considering the facts that even an unskilled illiterate manual labourer in Kerala was getting more than Rs.100/= per day in 1995, he was a graduate working as Site Manager and his age etc., even if the salary certificate is not accepted, we are of the opinion that at least Rs.3,000/= can be taken as the monthly income.

3. With regard to the injuries, the wound certificate would show that he had a cut injury on the right leg, sub condylar fracture right tibia and fracture right femur. The certificate dated 7.10.96 (Ext.A10) issued from Krishna Nursing Home reads as follows:

> "Mr.Ambili,37 years, Male, admitted on 20.7.'95 at 8-00 PM(IP No.2025/95) following alleged RTA about one week ago (initially admitted and treated at M.M.M.Hospital, Kolencherry sustained Subtrachanteric fracture (R) femur and fracture upper end of (R) Tibia was initially treated c Skeletal traction,

antibiotics, Analgesics and anti inflammatory medicines.

On 24.7.95, under General Anaesthesia fracture femur reduced and stabilised using IM Nail and Wire loops. P O P Cylinder Cast given on 3.8.95 and he was discharged on 5.8.95.

He was readmitted on 15.4.96 for Implant removal & Sequestrectomy under General Anaesthesia.

At present he has mild persistent infection – a discharging sinus, mild shortening of (R) LL and limping. He needs personal attention for day to day needs dressings and other supportive measures."

By certificate dated 13.10.97 an Orthopaedic Surgeon certified that there is a permanent disability of 25%. We extract the certificate as follows:

"This is to certify that I have examined Sri.Ambili aged 39 yrs on 13/10/97 and I am of the opinion that he has got the following disabilities of his (R)lower limb.

(1)Limbing (R) side present.
(2) 2.5 cms shortening of (R) lower limb in the Femoral Compartment.
(3) 2 cms waisting of (R) calf muscle.
(4) 3.5 cms waisting (R) Thigh muscles.
(5) 30° Limitation of Flexion of (R) kneejoint.
(6) 10° Limitation of dorsiflexion of (R) foot at ankle.
(7) 15° Limitation of plantar flexion of (R) foot at ankle.
(8) 20° Limitation of Flexion of (R) Hip

joint.
(9) Internal and External rotations of (R) Hip limited.
(10) 20 cms long scar on the lateral aspect of (R) Thigh present.
(11) A depressed scar on the middle of (R) Thigh with discharge.
(12) Sitting in squatting position not possible.

Certified that I have examined the Medical Certificate issued from Krishna Nursing Home, Kochi before issuing this certificate.

I further certify that the percentage of permanent disability comes to 25% (Twenty five%).”

The certificate dated 15.12.1997 (Ext.A11) shows that he had continued the treatment and readmitted and there was shortening of 2.5 cm right leg and limbing. Even though medical certificates were marked and no contrary evidence was produced, the Tribunal has taken only 8% permanent disability. The certificates would also show that he was under treatment for 10 months, he had undergone three operations and there was limbing. Shortening is 2.5cms. The disability assessed by the doctor at 25% cannot be stated to be arbitrary. PW2 was examined and proved the disability. We are of the opinion that there is no reason to accept a different assessment. It is submitted by the counsel for the appellant that in view of the accident he was bed ridden and finally after filing the appeal, the

appellant died leaving the widow at the age of 45 with a child and, therefore, argued that instead of 25%, compensation for 100% ought to have been granted. But, we have fixed only 25% as the permanent disability on the basis of medical certificate. Even though his untimely death may have a very casual connection with the injuries and mental agony caused due to death, there is no material to hold that he was died due to the accident especially death was after 10 years of the accident though he was only at the age of 47 at the time of death. Hence, there is no need to change the disability. If that be so, compensation payable for disability will be 3000 x 12 x $\frac{25}{100}$ x 16 = 1,44,000/=. The Tribunal has awarded only Rs.32,614/= for disability and earning capacity. Therefore, balance compensation payable will be Rs.1,11,386/= on this count. The Tribunal has awarded Rs.20,000/= as loss of income for 10 months (when the injured was under treatment) at the rate of Rs.2,000/= per month. Since we have taken Rs.3,000/= as monthly income, he is entitled to an additional amount of Rs.10,000/=. So, the total additional compensation payable will be Rs.1,21,386/=. The third respondent insurance company is directed to deposit the same, over and above the decreed amount by the Tribunal, with 8% interest from the date of

application till its deposit, within three months from the date of receipt of a copy of this judgment. Additional appellants (legal representatives) are entitled to the same in equal proportion.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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